



Delaware Department of Natural Resources and Environmental Control
(DNREC)

January 6, 2015

ISSUED BY: E. Alex Rittberg
Environmental Program Administrator
302-395-2500

SUBJECT: **AWARD NOTICE**
NAT14004-HFClosure
Heating Fuel Underground Storage Tank (UST) Closure Assistance Program
Removal, Closure in Place and Limited Overexcavation Services

TABLE OF CONTENTS
OF
KEY CONTRACT INFORMATION

1. CONTRACT PERIOD	3
2. VENDORS	3
3. PRICING	3
ADDITIONAL TERMS AND CONDITIONS.....	4
APPENDIX A.....	4

KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

[\(Return to Table of Contents\)](#)

Each contractor's contract shall be valid for a 2 year period from January 1, 2015 through January 1, 2017. Each contract may be renewed for two (2) additional one (1) year period(s) through negotiation between the contractor and DNREC. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

2. VENDORS

[\(Return to Table of Contents\)](#)

Coastal Pump & Tank, 17401 South DuPont Highway, P.O. Box 177, Harrington, DE 19952
Phone: 302-398-3061

1st State Petroleum Services, Inc., 714 Gallo Road, Harrington, DE 19952
Phone: 302-398-9704

J & M Industries, 11 Millside Drive, Wilmington, DE 19801
Phone: 302-575-0200

Joseph T. Hardy & Son, Inc., 425 Old Airport Road, New Castle, DE 19720
Phone: 302-328-9457

3. PRICING

[\(Return to Table of Contents\)](#)

Prices will remain firm for the initial term of the contract.

Professional Service

Fixed Price Payment

Removal of $\leq 1,100$ gallon Heating Fuel UST as part of Heating Fuel UST Closure Assistance Program including UST Removal soil samples per the *DNREC-Tank Management Section Requirements for UST Removals: Notification and Sampling (October 2012)*

\$2,900.00/UST

Closure in Place of $\leq 1,100$ gallon Heating Fuel UST as part of the Heating Fuel Closure Assistance Program including UST closure in place soil samples per the *DNREC-Tank Management Section Requirements for UST Closure in Place: Notification and Sampling (October 2012)*

\$2,550.00/UST

Award Notice
Contract No. NAT14004-HFClosure

Collection and Laboratory Analysis of Soil Samples in Addition to the DNREC-TMS Requirements for UST Removal and Closure in Place Guidance Documents (October 2012) **\$92.50/Soil Sample**

Excavation, Loading, Transport, and Disposal of Heating Fuel Impacted Soils (maximum 22 tons); Replacement Backfill Materials (Delivery, Spreading, Compaction); and Collection and Laboratory Analysis of Overexcavation Soil Samples per the *DNREC-Tank Management Section Requirements for Overexcavation Notification and Sampling (October 2012)* **\$4,445.00/Overexcavation**

ADDITIONAL TERMS AND CONDITIONS

[\(Return to Table of Contents\)](#)

The terms and conditions of the contract are outlined in the Professional Services Agreement located in Appendix A.

APPENDIX A
PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of January 1, 2015 ("Effective Date") and will end on January 1, 2017, by and between the State of Delaware, Department of Natural Resources and Environmental Control ("Delaware"), and VENDOR NAME, a STATE corporation, with offices at VENDOR ADDRESS ("VENDOR").

WHEREAS, Delaware desires to obtain certain services regarding Heating Fuel Underground Storage Tank (UST) Closure Assistance Program Removal, Closure in Place and Limited Overexcavation Services and

WHEREAS, VENDOR desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and VENDOR represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and VENDOR agree as follows:

1. Services.

- 1.1 This Agreement is a multiple source contract for professional services. VENDOR is one of several firms that Delaware has entered into agreements with under Contract No. NAT14004-HFClosure to provide professional services to Delaware, consisting of Heating Fuel Underground Storage Tank (UST) Removal, Closure in Place and limited Overexcavation Services as part of the Heating Fuel UST Closure Assistance Program (as detailed in the attached Request for Proposal and hereby incorporated as part of this Contract), on site-specific projects. Entering into this Agreement entitles VENDOR to receive task orders from Delaware during the Contract period when Delaware requires professional services for Heating Fuel UST Removal, Closure in Place and Overexcavation Services as part of the Heating Fuel UST Closure Assistance Program on any site-specific project. The task orders to perform professional services on site-specific projects will be on a rotating basis. The task order will specify that VENDOR has been selected to perform the work pursuant to this Professional Service Agreement. The payment for services rendered under each task order shall be as follows:

Award Notice
Contract No. NAT14004-HFClosure

<u>Professional Service</u>	<u>Fixed Price Payment</u>
Removal of ≤1,100 gallon Heating Fuel UST as part of Heating Fuel UST Closure Assistance Program including UST Removal soil samples per the <i>DNREC-Tank Management Section Requirements for UST Removals: Notification and Sampling (October 2012)</i>	\$2,900.00/UST
Closure in Place of ≤ 1,100 gallon Heating Fuel UST as part of the Heating Fuel Closure Assistance Program including UST closure in place soil samples per the <i>DNREC-Tank Management Section Requirements for UST Closure in Place: Notification and Sampling (October 2012)</i>	\$2,550.00/UST
Collection and Laboratory Analysis of Soil Samples in Addition to the DNREC-TMS Requirements for UST Removal and Closure in Place Guidance Documents (October 2012)	\$92.50/Soil Sample
Excavation, Loading, Transport, and Disposal of Heating Fuel Impacted Soils (maximum 22 tons); Replacement Backfill Materials (Delivery, Spreading, Compaction); and Collection and Laboratory Analysis of Overexcavation Soil Samples per the <i>DNREC-Tank Management Section Requirements for Overexcavation Notification and Sampling (October 2012)</i>	\$4,445.00/Overexcavation

VENDOR shall sign the task order as acceptance of performing the work, and the Task Order shall become an addendum to this agreement. As used hereinafter, the term "Agreement" shall include all Addenda entered into hereunder, unless the two terms are used separately and the context indicates otherwise.

If VENDOR rejects a task order to perform a site-specific project, the next vendor on the list will be invited to perform the site-specific project. VENDOR will be placed at the bottom of the vendor list and must wait until they rotate to the top of the vendor list to be invited to perform another project.

1.2 VENDOR shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

Award Notice

Contract No. NAT14004-HFClosure

1.3 The Request for Proposal, Proposal, Specification or Scope of Work, Special Instructions, Purchase Order, Addenda for specific projects, and Agreement shall be a part of, and constitute the entire Agreement entered into by the State of Delaware and VENDOR. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof. In the event there is any discrepancy between any of these Contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Task Order/Addenda for specific projects
- Request for Proposal
- Specifications or Scope of Work
- Proposal
- Purchase Order
- Special Instructions

1.4 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VENDOR shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify VENDOR, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 VENDOR will not be required to make changes to its scope of work that result in VENDOR's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from January 1, 2015 through January 1, 2017. This Agreement may be renewed for two (2) additional one (1) year period under the same terms and conditions.

2.2 Delaware will pay VENDOR for the performance of services on a site-specific project described in the Task Order for that project. Delaware has no obligation to pay VENDOR for any services under this Agreement unless a Task Order has been signed by VENDOR for a specific project, and Delaware has issued a purchase order for the services called for in the Task Order.

Award Notice

Contract No. NAT14004-HFClosure

2.3 Delaware's Obligation to pay VENDOR for the performance of services under this agreement will not exceed the fixed fee amount of \$225,000.00. A purchase order shall be established for this amount at the beginning of the project. Payment for each task order/site specific addendum will be charged to this purchase order as work is completed per the payment procedure described in paragraph 2.4. It shall be VENDOR's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee established in the Addendum. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to VENDOR for the site-specific project Addendums, including any amendments to the purchase order based on additional work required by any change order.

2.4 VENDOR shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VENDOR a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle VENDOR to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to VENDOR, VENDOR ADDRESS.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by VENDOR. If an Appendix specifically provides for expense reimbursement, VENDOR shall be reimbursed only for reasonable expenses incurred by VENDOR in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to all damages, costs and expenses caused by VENDOR's negligence, resulting from or arising out of errors or omissions in VENDOR's work products, which have not been previously paid to VENDOR.

2.8 Invoices shall be submitted to:

DNREC-TMS
391 Lukens Drive

Award Notice
Contract No. NAT14004-HFClosure

New Castle, DE 19720
Attn: Project Manager

3. Responsibilities of VENDOR.

3.1 VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by VENDOR, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, VENDOR shall follow practices consistent with generally accepted professional and technical standards. VENDOR shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, VENDOR shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the VENDOR to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. VENDOR will not produce a work product that violates or infringes on any copyright or patent rights. VENDOR shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by VENDOR shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of VENDOR's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR's performance or failure to perform under this Agreement.

3.4 VENDOR shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by VENDOR's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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Award Notice

Contract No. NAT14004-HFClosure

3.5 On any site-specific project, the designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off any site-specific project under this Agreement for what are now unforeseeable circumstances, VENDOR will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If VENDOR fails to make a required replacement within 30 days, Delaware may terminate this Agreement or any Addendum hereto, for default. Upon receipt of written notice from Delaware that an employee of VENDOR is unsuitable to Delaware for good cause, VENDOR shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 VENDOR shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 VENDOR agrees that its officers and employees will cooperate with Delaware in the performance of services under any Addendum to this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 VENDOR has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 VENDOR will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule for a site-specific project must be included in the Addendum. Heating fuel UST removal or closure in place projects as part of the Heating Fuel UST Closure Assistance Program will be completed within 60 days of receipt of the State of Delaware task order.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that VENDOR fails to complete the project or any phase thereof within the time specified in the Contract or in any Addendum to this Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion

Award Notice

Contract No. NAT14004-HFClosure

within the time specified in any Addendum to this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in the Addendum.

5. State Responsibilities.

5.1 In connection with VENDOR's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in any Agreement, or any Addendum hereto, which this applies.

5.2 Delaware agrees that its officers and employees will cooperate with VENDOR in the performance of services under this Agreement and will be available for consultation with VENDOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to VENDOR. It is understood that Delaware's representatives' review comments do not relieve VENDOR from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by VENDOR as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by any Addendum to this Agreement.

VENDOR shall return any original data provided by Delaware.

5.6 Delaware shall assist VENDOR in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 VENDOR will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

Award Notice

Contract No. NAT14004-HFClosure

5.8 Delaware agrees not to use VENDOR's name, either express or implied, in any of its advertising or sales materials. VENDOR reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by VENDOR for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. VENDOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 VENDOR retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VENDOR retains title, whether individually by VENDOR or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall VENDOR be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VENDOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 VENDOR warrants that its services will be performed in a good and workmanlike manner. VENDOR agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by VENDOR for Delaware in connection with the provision of the Services, VENDOR shall pass through or assign to Delaware the rights VENDOR obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 VENDOR shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the VENDOR, its agents or employees, or (B) VENDOR' breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) VENDOR shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) VENDOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies VENDOR in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by VENDOR; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by VENDOR; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies

Award Notice

Contract No. NAT14004-HFClosure

constitute Delaware's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

9.3 Delaware agrees that VENDOR's total liability to Delaware for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or VENDOR negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to VENDOR.

In no event shall VENDOR be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if VENDOR has been advised of the likelihood of such damages.

10. Employees.

10.1 VENDOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VENDOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of VENDOR who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify,

Award Notice

Contract No. NAT14004-HFClosure

defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 VENDOR shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, VENDOR has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by VENDOR under this Agreement, or any Addendum hereto, for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to VENDOR at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay VENDOR its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. VENDOR shall not perform further work under this Agreement after the effective date of suspension. VENDOR shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by VENDOR for any cause other than the error or omission of the VENDOR, for an aggregate period in excess of 30 days, VENDOR shall be entitled to an equitable adjustment of the compensation payable to VENDOR under this Agreement to reimburse VENDOR for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement, or any Addendum hereto, may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

Award Notice
Contract No. NAT14004-HFClosure

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement, or any Addendum hereto, may be terminated in whole or in part by Delaware for its convenience, but only after VENDOR is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay VENDOR that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to VENDOR at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of VENDOR's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event VENDOR shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of VENDOR assigned to the performance of the Agreement, or any Addendum hereto, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of VENDOR to fulfill contractual obligations it is determined that VENDOR has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

- 13.6.1 Delaware may, by written notice to VENDOR, terminate this Agreement, or any Addendum hereto, if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR or any agent or representative of VENDOR to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with

Award Notice

Contract No. NAT14004-HFClosure

respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement, or any Addendum hereto, is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against VENDOR it could pursue in the event of a breach of this Agreement by VENDOR.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by VENDOR, without prior written approval of Delaware.

15.3 Approval by Delaware of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 VENDOR shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by VENDOR, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the VENDOR's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, or any Addendum hereto, and absent such action this Agreement, or any Addendum hereto, shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

VENDOR and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 VENDOR may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise

Award Notice

Contract No. NAT14004-HFClosure

expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, VENDOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. VENDOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement, or any Addendum hereto, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement, or any Addendum hereto, shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement, or any Addendum hereto, shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 VENDOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 VENDOR acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare VENDOR in breach of the Agreement, terminate the Agreement, and designate VENDOR as non-responsible.

20.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

Award Notice

Contract No. NAT14004-HFClosure

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

Award Notice

Contract No. NAT14004-HFClosure

20.8 VENDOR shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit VENDOR' performance and records pertaining to this Agreement at the VENDOR business office during normal business hours.

21. Insurance.

21.1 VENDOR shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate, **and**
- C. Pollution Liability-\$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate, **and**
- D. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate; or
- E. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate, or
- F. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate, **and**
- G. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000.00 each person and \$300,000.00 each accident as to bodily injury and \$25,000.00 as to property damage to others.

Delaware shall not be named as an additional insured on any insurance policy obtained by VENDOR, or any of VENDOR's subcontractors pursuant to this Agreement.

21.2. VENDOR shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

DNREC-Tank Management Section
391 Lukens Drive
New Castle, DE 19720

In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. VENDOR consents to jurisdiction venue in the State of Delaware.

24. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE: Alex Rittberg, Program Administrator
DNREC-TMS
391 Lukens Drive
New Castle, DE 19720

TO VENDOR: VENDOR NAME

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

Witness

Date: _____

David S. Small, Secretary
Delaware Department of Natural Resources and Environmental Control
Date: _____

VENDOR

Witness

Date: _____

Signature

Name: _____

Title: _____

Date: _____